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December 8, 2020

Via ECF

The Honorable Robert W. Lehrburger
United States Magistrate Judge
United States District Court

Re: *Jose Mario Perez, Jr. v. 33rd Street Investors I LLC and Wattle Cafe LLC*

Docket No. 1:19-cv-01392-(ALC) (RWL)

Dear Judge Lehrburger:

We represent the plaintiff in the above-entitled action. Pursuant to Your Honor's Order of December 1, 2020, we write to respond and show cause concerning whether this case should not be dismissed for mootness and lack of subject matter jurisdiction. As explained below, plaintiff is unable to respond and show cause because defense counsel have not provided any documentary evidence (e.g. lease termination/surrender documents and/or client affidavit) to verify the representations that the tenant defendant has "permanently closed, vacated the subject premises, and ceased operations."

It is important to note that defense counsel has previously falsely represented that the closure of tenant's business (Wattle Café at 519 Third Avenue in Manhattan). On May 8, 2020, defense counsel requested to stay all existing deadlines based on the false statement that "the subject premises [Wattle Café] is not operating due to the COVID-19 pandemic". (See ECF Document #45). The subject premises was open at that time and Your Honor denied the request to stay. (See ECF Document #46 and 48).

Even more concerning is the fact that the website for Wattle Café currently identifies the 519 Third Avenue premises at issue as an open location that a customer can order from. See <https://www.wattlecafe.com/s/order> and click "Order Online" (last visited on December 8, 2020).

Defense counsel submits no evidence from their clients to substantiate the representation. The supporting exhibits are a printout from a Google search and a picture of what appears to be a storefront. Specifically, defense counsel do not provide an affidavit from the client (with personal knowledge) and/or documents to show that the lease has been terminated or that the tenant defendant has surrendered the premises.

Immediately after Your Honor's Order, plaintiff's counsel contacted defense counsel and requested that they provide documents to verify that their representation that the subject premises has permanently closed, vacated the subject premises, and ceased operations. Plaintiff's counsel

also informed defense counsel that the Wattle Café website still identified the Wattle Café at 519 Third Avenue as an open location to order from.

Defense counsel has completely ignored plaintiff's communication thereby requiring plaintiff to seek judicial intervention to compel the defendants to provide an affidavit from the client (with personal knowledge) and/or the documentation verifying that the Wattle Café at 519 Third Avenue has "permanently closed, vacated the subject premises, and ceased operations." Upon receipt of such documentation, plaintiff will be in a position to respond and show cause concerning whether this case should not be dismissed for mootness and lack of subject matter jurisdiction. Thank you for your time and attention to this matter. With kindest regards, I am

very truly yours,

/s/

Glen H. Parker, Esq.